

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.3257 of 2009 (O&M)
Date of decision: 30.10.2019

Usha Devi and others

....Appellants

Versus

Mahender Singh and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. K.P. Kaur, Advocate,
for Mr. Surinder Gandhi, Advocate,
for the appellants.

Mr. Ramender Chauhan, Advocate,
for respondent No.1.

Mr. Aakash Sridhar, Advocate,
for Mr. Ashwani Talwar, Advocate,
for respondent No.2-Insurance Company.

RITU BAHRI J. (Oral)

FAO No.3257 of 2009 has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') in a petition under Section 163-A of the Motor Vehicle Act, vide award dated 30.04.2009 on account of death of Ratipal in a motor vehicular accident which took place on 13.10.2006. Appellant No.1 is widow, appellant Nos. 2 & 3 are children and appellant No.4 is mother of deceased Rati Pal.

On the other hand, **Cross Objection No.8-CII of 2011** has been filed respondent No.2-Insurance Company challenging the above said award stating that the Tribunal has wrongly awarded compensation in favour of the claimants.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 13.10.2006, Ratipal (since deceased), along with claimant-Anup Singh, was coming on a motorcycle bearing registration No. HR-16-E-6141. When they reached near village Shimli, suddenly an accident took place with another motorcycle No. HR-16-D-3021, which was being driven by Manoj son of Des Raj. As a result of this accident, both Ratipal and Anup received multiple injuries. Unfortunately, Ratipal succumbed to the injuries on 16.10.2006. Consequently, the claimant-appellants filed a claim petition under Section 163-A of the Act before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the Ratipal had died during the use of motorcycle bearing No. HR-16-E-6141, which met with an accident. This finding was rightly given on the basis of deposition of Usha Devi (PW-1) and Surender @ Sunil (PW-2).

In the absence of any documentary proof, income of the deceased was assessed as Rs.2100/- per month as that of an unskilled labourer, out of which, one-third amount was deducted towards his personal expenses. By doing so, the total income of deceased came to Rs.1400/- per month i.e. Rs.16,800/- per annum. As per postmortem report Ex.P2, deceased was 28 years of age at the time of death/accident. However, multiplier of 15 was applied by the Tribunal. After applying the multiplier of 15, dependency of claimants came to Rs.2,52,000/- (16,800/- x 15). In addition to it, Rs.15,000/- were awarded on account of cost of treatment,

claimants were found entitled to total compensation of Rs.2,72,000/- along with interest @ 7% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellants have preferred the present appeal.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Parties are not in dispute with regard to the finding given by Tribunal on issue No.1. Respondent No.1 Mahender Singh was owner of the vehicle. He entered into evidence as RW-1 and admitted that respondent No.2-Insurance Company had compensated him for the loss/damage caused to motorcycle vide cheque No.868512 dated 27.09.2007 as mentioned in affidavit Ex.R-1. In this case, claimant-appellants cannot get lump sum payment of Rs.5,00,000/- as per notification dated 22.05.2018 because benefit of this notification is to be given prospectively i.e. with respect to the claimants, where the accident had taken place after 22.05.2018. This aspect has been considered a Division Bench of Calcutta High Court in **Urmila Halder vs. New India Assurance Co. Ltd. and others**, 2018 (3) Cal. L.T. 522 and Gauhati High Court in **The New India Assurance Company Ltd. through the Branch Manager, Aizawl Branch, Chanmari, Aizawl, Mizoram vs. Lalmihriata and others**, 2019 (3) GauLT 278. In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgment passed by Hon'ble the Supreme

another, 2009 (3) RCR (Civil) Page 77, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.3300/- per month
(ii)	1/3 rd of (i) above is deducted as personal expenses of the deceased	3300 – 1100 = Rs.2200/-
(iii)	Compensation after multiplier of 17 is applied (age 28 years)	Rs.2200/- x 12 x 17 = Rs.4,48,800/-
(iv)	Compensation under conventional heads	Rs.95,00/-
(v)	TOTAL COMPENSATION AWARDED	Rs.4,58,300/-
(vi)	Enhanced amount of compensation	Rs.4,58,300 – 2,72,000= Rs.1,86,300/-

The enhanced amount of compensation of **Rs.1,86,300/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “**Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and others**, Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of 2019) (decided on 01.05.2019). Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the impugned award stands modified to the above extent and the present appeal as well as Cross Objection No.8-CII of 2011 stand disposed of.

(RITU BAHRI)
JUDGE

30.10.2019
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No